Supreme Court, U.S.
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No. 02 - 1150

In The

Supreme Court of the United States

Thomas A. Martin, Petitioner

v.

KeyCorp, Key Bank National Association (f/k/a Key Bank of New York, N. A., Key Bank of Southeastern New York), Robert G. Qulia.

Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Second Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*

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6 pp

INTRODUCTION

The decision of the Second Circuit should not be allowed to stand because it was produced by an appellate process that violated Petitioner Thomas A. Martin's ("Martin") Fifth Amendment rights to equal treatment under the law in the several ways enumerated in the petition and, in addition, incorrectly conceded privity and issue preclusion to respondent Qulia.

Respondents' Brief In Opposition ("Resp. Brief") rests on four arguments each addressed below. The Brief's implication that Martin's relentless lay efforts to obtain justice have disentitled him to equal treatment does not merit rebuttal.

I.

MARTIN'S QUESTIONS ONE, TWO AND THREE RELATING TO CIRCUIT COURT PROCEDURES ARE APPROPRIATELY RAISED

Since the violations occurred subsequent to the circuit court record's closing, they could not have been raised previously. Furthermore, there is precedent for raising them in a petition for *certiorari*.

In 1976, this Court granted a writ of *certiorari* in the case decided by the decision *Browder v. Dir., Ill. Dept. of Corr.*, 434 U.S. 257 (1978) that included a question challenging unpublished opinions, an issue that had not

been raised by *Browder* below.

If not properly raised at this stage of a proceeding or in this forum, a citizen would be denied recourse; i. e. the opportunity to challenge the process and assert one's right to equal treatment.

II.
DISTRICT COURT'S DECISION WITH RESPECT TO 42 U.S.C. SEC. 1985 (2) WAS IN ERROR

Respondents argue (Resp. Brief, p. 3 & 5) that since District Court dismissed Martin's complaint for failure to state a cause of action with respect to section 1985 (2), any other District Court errors are irrelevant. The problem with this argument is that District Court's holding that a 1985 (2) complaint required an allegation of racial or other class based animus is incorrect. This Court in *Kush v. Rutledge*, 460 U.S. 719, 720 (1983) clearly held to the contrary.

This District Court error was specifically identified for appellate review by Martin in his brief to the Second Circuit but was not addressed by that court in its unpublished summary order affirming District Court's decision.

Respondents' reliance on what they clearly know is an error should undermine the credibility of their brief.

III.
PRIVITY

Respondent's arguments with respect to the issue of privity, Rep. Brief, p. 5-6, are simply in error. They claim that the District Court decision conceding privity to Qulia is not in conflict with other Federal decisions or with the law of New York, yet they fail to support their argument by citing any case law, statute or rule for there are none.

Finally, Respondents effectively concede their argument is without merit and seek refuge in Rule 10 of this Court. Martin's counter argument is: had his circuit court appeal been properly and fairly addressed, this obvious district court error would have been corrected. The affirmed district court decision is bad new law that should not be allowed to stand.

IV.
DEFENSIVE ISSUE PRECLUSION

Respondent's argument with respect to defensive issue preclusion (Resp. Brief, p. 6) is flawed in several respects. First, Respondents never specifically raised the argument until their appellees' brief to the circuit court, and it therefore is irrelevant.

Second, even if properly raised in district court, the

requisite conditions are not present. The issue Respondents wanted precluded had never actually been litigated and was therefore not essential to any prior judgment. Bankruptcy court rejected their identical argument at a hearing in 1997.

Furthermore, as this Court held in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979) defensive preclusion is inoperative if the party against whom it is pleaded did not have a full and fair opportunity to litigate the issue or if the Court finds it unfair to permit its preclusion. Since the one issue that would theoretically be precluded under this theory related to attorney Qulia's prohibited *ex-parte* contacts with the trial judge, the court, on the grounds of fairness, should have denied its use even if the other tests were met.

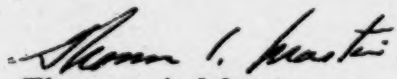
Finally, the second incorrectly precluded issue relates to Qulia's having arranged for a 1994 trial witness to commit perjury. Since this wasn't discovered until the year 2000, it therefore had never been raised, much less litigated, prior thereto. Defensive preclusion could not possibly apply. Yet the district court decision precluded it.

Each of the foregoing arguments relative to defensive issue preclusion were presented to the Second Circuit in Martin's briefs, but to no avail. Had the appeal not been segregated and had it been given thorough consideration, a different result would have been highly probable.

CONCLUSION

Respondents' request that this Court deny Martin's petition should, in fairness, be rejected since, for the foregoing reasons, their arguments are without merit.

Respectfully submitted,



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